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8 IN THE UNITED STATES DISTRICT COURT
9 FOR THE NORTHERN DISTRICT OF CALIFORNIA
10 SAN FRANCISCO DIVISION

11 **JAHIR ALBERTO ROJAS,**

12 Plaintiff,

13 v.

14 **R. LOZA, Correctional Officer, R. SINGH,**
15 **Correctional Officer, D. SANDOVAL, Correctional**
16 **Officer,**

17 Defendants.

C 07-4662 MMC

**[PROPOSED] ORDER
GRANTING MOTION TO
DISMISS AND MOTION FOR
QUALIFIED IMMUNITY**

18 Plaintiff Jahir Alberto Rojas, CDCR number P-58734, is a state prisoner currently
19 incarcerated at California State Prison, Corcoran. Plaintiff filed this action under 42 U.S.C. §
20 1983 alleging an Eighth Amendment claim against R. Loza, R. Singh, and D. Sandoval.

21 Defendants filed a motion to dismiss the action because Plaintiff failed to exhaust his
22 available administrative remedies before filing suit, as required by the Prison Litigation Reform
23 Act, 42 U.S.C. § 1997e(a), and defendants are entitled to qualified immunity. Defendants argued
24 that Plaintiff failed to pursue his administrative appeals to exhaustion through the requisite third
25 level of review. Defendants also reasonably believed the amount of force used was lawful and
26 necessary to restore order at Salinas Valley State Prison.

27 After full consideration of all pleadings and good cause appearing, the Court grants
28 Defendants' motion to dismiss this action without prejudice for failing to exhaust administrative

[Proposed] Order Granting Mot. Dimiss & Motion Qualified Immunity

Rojas v. Loza, et al.
Case No. C 07-4662 MMC

1 remedies and motion for qualified immunity.

2 IT IS SO ORDERED.

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5 Dated: _____

The Honorable Maxine M. Chesney

DECLARATION OF SERVICE BY U.S. MAIL

Case Name: **Rojas v. Loza, et al.**

No.: **C 07-4662 MMC**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service that same day in the ordinary course of business.

On July 25, 2008, I served the attached

**DEFENDANTS' NOTICE OF MOTION AND MOTION TO DISMISS AND MOTION
FOR QUALIFIED IMMUNITY**

**DECLARATION OF E. MEDINA IN SUPPORT OF DEFENDANTS'
MOTION TO DISMISS**

**DECLARATION OF N. GRANNIS IN SUPPORT OF DEFENDANTS'
MOTION TO DISMISS**

**[Proposed] ORDER GRANTING MOTION TO DISMISS AND MOTION FOR
QUALIFIED IMMUNITY**

by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the internal mail collection system at the Office of the Attorney General at 455 Golden Gate Avenue, Suite 11000, San Francisco, CA 94102-7004, addressed as follows:

Jahir Alberto Rojas, P-58734
California State Prison - Corcoran
P. O. Box 8800
Corcoran, CA 93212
Pro Per

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on July 25, 2008, at San Francisco, California.

T. Oakes
Declarant

/s/ T. Oakes
Signature